Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98

COMMENTS

Sprint Corporation hereby respectfully submits its comments to the petitions for reconsideration of the *UNE Remand Order*[1] filed on February 17, 2000 in the above-captioned proceeding. Sprint addresses below numerous issues raised by petitioners.

I. The Conditions Under Which ILECs Are Relieved From Unbundling Local Circuit Switching Should Be Strengthened, Not Relaxed.

In the *UNE Remand Order*, the Commission concluded (paragraph 278, footnote omitted) that "requesting carriers are not impaired without access to unbundled local circuit switching when they serve customers with four or more lines in density zone 1 in the top 50 metropolitan statistical areas (MSAs)...where incumbent LECs have provided nondiscriminatory, cost-based access to the enhanced extended link (EEL) throughout density zone 1." Several parties have requested that the level at which ILECs may obtain relief from the local circuit switching unbundling requirement be changed from the current 4 lines to various higher levels.[2] In contrast, Bell Atlantic has requested that ILECs not be required to unbundle local circuit switching in any zone in any of the top 50 MSAs for any customer (no matter how many lines

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[1] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order* released November 5, 1999 (65 FR 2542, January 18, 1999).

[2] *See, e.g.*, petitions for reconsideration of AT&T (8 lines); MCIW, Comptel and Birch (DS1); and Sprint (39 lines, or 15 key trunks or more than 50 Centrex lines).

that customer may have), and that ILECs no longer be required to provide EELs as a precondition for obtaining relief from the unbundling requirement. As discussed below, Bell Atlantic's petition should be rejected; indeed, the public interest requires that the conditions for relief be strengthened, not relaxed.

The Commission selected a 4-line cut-off to distinguish between the mass market -- residential and small business customers -- on the one hand (customers presumed to be too small for CLECs to serve using their own switches), and medium and large business customers on the other hand (whom the Commission assumed could be served by CLECs using the CLECs' own switches). As several petitioners point out, this 4-line standard was chosen without citing any record evidence.[3] Indeed, on the basis of more fact-based criteria, the Commission should adopt a higher number of lines to distinguish between mass market and medium/large business customers: Sprint cited Yankee Group and internal Sprint business practices to justify its higher dividing line (p. 8); AT&T points out that "hot cut" conversions are required for up to 8 lines (p. 12) and that 16 lines is the approximate level at which it is practical to use a DS1 loop facility (p. 16); and both Comptel (p. 4) and Birch (p. 6) note that it is not economic for CLECs to self-provision service to customers with only 3 lines or fewer. Any of these proposals would seem to be more rational than the arbitrary 4-line rule adopted by the Commission. The important factor here is that the Commission adopt a line count which reasonably reflects "actual economic and operational realities that truly distinguish larger business customers from residential and smaller business customers" (AT&T, p. 17).[4]

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[3] *See, e.g.,* Sprint, p. 7; AT&T, p. 15; MCIW, p. 20; Birch, p. 7; Comptel, p. 3.

[4] Birch (p. 9) also requests clarification that the line cap (whatever is adopted) applies only at the time the customer initiates service. If the customer subsequently obtains additional lines so that its total lines exceed the line cap, the ILEC should be required to continue to provide unbundled local switching to the CLEC for use in providing local service to the customer. As Birch correctly notes (*id.*), to allow the ILECs to do otherwise would "penalize" CLECs

Bell Atlantic takes the opposite view in its petition, proposing that ILECs be exempt from unbundling local switching in the top 50 MSAs (all zones, all customers) and wherever else alternative switching facilities are in use, and that ILECs not be subject to the EEL requirement. Bell Atlantic's argument that elimination of the existing requirements will not impair CLECs' ability to provide service is without merit.

First, the mere fact that a CLEC may have deployed its own local switch in a MSA does not mean that it will be economical to use that switch to provide service to mass market customers. Smaller customers (as noted above, at least those with 8 or fewer lines) must have their lines manually transferred from the ILEC to the CLEC switch; given the per-loop cost of a coordinated cutover, and the average revenues generated by a smaller customer, it generally is more economical for the CLEC to use unbundled switching than to self-provision for these smaller customers.

Second, Bell Atlantic has failed to demonstrate (for itself, much less for other ILECs nationwide) that there has been significant CLEC switch deployment in Zones 2 or 3. (To the contrary, what information has been included in the record indicates that virtually all CLEC switches have been deployed in Zone 1 areas; *see UNE Remand Order* at para. 285). Even if a CLEC may find it financially feasible to deploy its own switch in a Zone 1 office, the costs of loop transport are likely to be sufficiently high to make it uneconomical to backhaul switched traffic originating in a Zone 2 or 3 office to the Zone 1 office in which the CLEC switch is collocated, at least until the CLEC has won over some minimum number of customers. In other

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for being successful and "would be directly counter to the Commission's stated goal of ensuring that small businesses are able to avail themselves of the benefits of competition." Certainly, if an ILEC is allowed to assess CLECs "market-based" rather than TELRIC-based local switching rates for customers who go over the line cap, competition for such customers will be substantially curtailed.

words, the cost of obtaining unbundled local switching from the ILEC is likely to be less than the combined cost of transporting the call (particularly if EELs are not available) to, and then performing the switching function at, the CLEC's own switch. In situations in which it remains less expensive to "buy" rather than "make," the lack of unbundled local circuit switching in Zone 2 and 3 offices will impair CLECs' ability to offer local service to end users who reside in those zones.

Finally, Bell Atlantic states (p. 3) that reducing the cost of collocation, "the Commission's stated rationale" for the EEL requirement, "is completely irrelevant to the statutory impairment test for unbundled switching." However, Bell Atlantic mischaracterizes the *UNE Remand Order* as regards the importance of EELs to CLECs' ability to provide service. While it is true that use of the EEL can reduce the costs of collocation, such cost reduction is not the ultimate goal. Rather, the cost reduction is important because it enhances the CLEC's ability to provide local services. A CLEC cannot, as a financial or operational matter, simultaneously deploy enough switches to obtain ubiquitous coverage. Without EELs, a CLEC might be forced to forego providing service to customers served by ILEC end offices in which the CLEC is not collocated. Such a situation clearly satisfies the statutory impairment standard.

II. The Commission Should Clarify the Conditions Under Which ILECs May Withdraw OS/DA As A UNE.

Section 51.319(f) of the Commission's Rules specifies that an ILEC must continue to provide operator services/directory assistance as a UNE where the ILEC "does not provide the requesting telecommunications carrier with customized routing or a compatible signaling protocol." In its petition (pp. 20-23), AT&T requests that the Commission clarify that before an ILEC can withdraw OS/DA as a UNE, the ILEC must (1) demonstrate through operational

evidence or testing that it can timely implement methods of customized routing on a nondiscriminatory manner; (2) provide advance notice of any discontinuation of OS/DA as a UNE and establish reasonable transition periods during which the ILEC continues to provide access to its OS/DA at TELRIC rates; and (3) not impose unreasonable terms upon any customized routing alternative.[5] Sprint supports AT&T's request. Until an ILEC can demonstrate that the customized routing alternatives and compatible, industry-standard signaling protocols are working (based on successful testing by at least one independent CLEC), in place, and available at reasonable rates, terms and conditions (as evinced by the fact that at least one CLEC has subscribed to the ILEC service), the ILEC must continue to provide OS/DA as a UNE. Unless the ILEC can make such a demonstration, there can be no assurance that it has satisfied the prerequisite conditions for eliminating OS/DA as a UNE.

III. Loop Conditioning Charges Should Be Based on TELRIC and Should Be Assessed Only On Loops Longer than 18,000 Feet.

As the Commission has acknowledged (*UNE Remand Order,* para. 193) and as several petitioners point out,[6] a forward-looking network should not require conditioning of loops 18,000 feet or shorter. Nonetheless, the Commission concluded that ILECs "should be able to charge for conditioning" loops 18,000 feet or shorter which have voice-transmission enhancing devices (*UNE Remand Order*, para. 193). Several parties request clarification and/or reconsideration that ILECs may not impose loop conditioning charges on loops less than 18,000 feet in length, or on any loop that does not have bridge taps, low pass filters, range extenders or other voice-

[5] *See also,* MCI Petition for Clarification, p. 16.
[6] *See, e.g.,* Sprint, p. 3; MCIW, p.15; Rhythms, p. 2; @Link, p. 4.

enhancing equipment; and that where loop conditioning charges are legitimately assessed, that such charges be based on TELRIC.[7] These petitions should be granted.

ILECs should not be rewarded for their failure to maintain their networks at minimum engineering levels. There is no dispute that the industry standard adopted many years ago specifies that lines shorter than 18,000 feet should not need to be equipped with devices to enhance voice transmissions. As MCIW points out (petition for reconsideration, p. 16), "it is ludicrous to suggest that requiring ILECs to provide DSL-capable loops imposes on them a new burden for upgrading their network that has not been a part of normal good business practices for many years." Therefore, it makes little sense for the Commission to allow ILECs to assess conditioning charges on loops shorter than 18,000 feet, or on a line of any length which is not equipped with voice transmission-enhancing devices.

Allowing ILECs to assess loop conditioning charges is inconsistent with the goals expressed in Sections 251 and 706 of the Act. The Commission has found that pricing on the basis of forward-looking costs is a key element in fostering competition in the local services market, and that ILEC networks must be upgraded or re-engineered, where necessary, to support the provision of advanced services. Allowing ILECs to assess loop conditioning charges on lines 18,000 feet or shorter is based on an embedded cost approach, and cannot readily be reconciled with the Commission's emphasis on forward-looking pricing and network design. For this reason as well, the Commission should grant the petitions requesting reconsideration of its decision to allow ILECs to assess loop conditioning costs on lines shorter than 18,000 feet.

[7] *See* n. 6 *supra*; *see also*, McLeodUSA, p. 2.

Several petitioners also request that the Commission clarify that where ILECs may assess a loop conditioning charge, such charge must be based on TELRIC.[8] Sections 51.319(a)(3)(B) and (C) of the Rules state that line conditioning costs must be recovered "in accordance with the Commission's forward-looking pricing principles...," and that ILECs shall recover nonrecurring loop conditioning costs "in compliance with rules governing nonrecurring costs in Section 51.507(e)," that is, based on the ILECs' forward-looking economic costs. In order to remove any uncertainty which may exist in regard to the pricing of loop conditioning charges, the Commission should clarify that all charges associated with loop conditioning, both recurring and non-recurring, are to be based on TELRIC. The Commission should also clarify that estimation of forward-looking costs should be based on the efficient removal of conditioning equipment, and not (for example) on the removal of a load coil one loop at a time (see Sprint, p. 5).

IV. Packet Switching Should Be Available As A UNE In Small End Offices Where the ILEC Itself Offers Packet Switching Services.

In the *UNE Remand Order* (para. 306), the Commission declined to require that ILECs offer packet switching functionality as a UNE, except in limited circumstances. Several petitions requesting reconsideration of this decision were filed.[9] These petitions should be granted for the reasons discussed below.

First, the decision to withhold packet switching as a UNE except in limited circumstances conflicts with the Commission's finding that competitive carriers "are impaired in their ability to provide advanced services" to residential and small business customers without access to ILEC-provided unbundled packet switching (*UNE Remand Order,* para. 309). If competitive carriers face prohibitively expensive costs to self-provision packet switching equipment (as is especially

[8] *See, e.g.,* Sprint, p. 4; MCIW, p. 17; Rhythms, p. 3; McLeodUSA, p. 2.
[9] *See, e.g.,* Sprint, p. 9; MCIW, p. 2; Comptel, p. 5; Intermedia, p. 3; AT&T, p. 1.

likely to occur in ILEC offices which have a relatively small customer base over which to amortize collocation, equipment, and other costs),[10] it is unlikely that a competitive market for the provision of advanced services will develop. And, because consumers increasingly demand "one-stop shopping" and bundled packages of services, a CLEC's inability to provide advanced data services will inevitably have a deleterious impact on the development of voice competition in the mass market as well.

Second, the Commission's stated rationale for its decision to not require ILECs to unbundle packet switching -- that an unbundling requirement would stifle ILECs' incentive to invest further in facilities used to provide advanced services (*id.*, para. 316) -- is directly at odds with the record evidence that numerous ILECs have planned or scheduled major investments in advanced services technology (*id.*, para. 315). Besides the evidence of ILEC investment in xDSL technology already in the record, petitioners cite more recent reports of even more wide-spread ILEC investments in advanced services technology.[11] And, given the explosive growth in the data market and the potential competitive threat posed by cable companies, it is difficult to believe that ILECs will allow their networks to become technologically antiquated purely as the result of an unbundling requirement.

Third, there may be markets where a single provider of packet switching (ILEC or CLEC) cannot justify the expense of deployment. However, if the packet switching platform deployed by an ILEC were available to CLECs, the combined marketing efforts of these multiple service providers could stimulate demand and attract a sufficient number of customers to make deployment of the packet switch economically attractive. Thus, advanced services would be

[10] *See* Sprint, pp. 10-12; MCIW, p. 4.
[11] *See, e.g.*, MCIW, p. 5; AT&T, p. 3.

available to consumers and businesses that otherwise would not have access to such capabilities, consistent with the goals of Section 706.

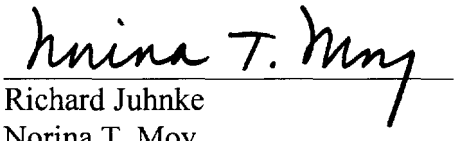
V. The Commission Should Not Require CLECs to Access the ILEC NID Through An Adjoining CLEC NID.

Section 51.319(b) of the Rules requires in part that ILECs "permit a requesting telecommunications carrier to connect its own loop facilities to on-premises wiring through the incumbent LEC's network interface device, or at any other technically feasible point." In its petition (p. 11), Bell Atlantic has requested that the Commission revise Section 51.319(b) to "...require competing carriers to access an incumbent's NID only through an adjoining NID deployed by the competing carrier."

Bell Atlantic's petition should be denied. Sprint is unaware of any technical reason to require CLEC NID-to-ILEC NID connections, nor does Bell Atlantic offer any such evidence. What is clear, however, is that Bell Atlantic's proposed rule change, if adopted, would require CLECs to invest their limited resources in costly and likely extraneous facilities. As the Commission correctly found (*UNE Remand Order,* para. 232), "...requiring a requesting carrier to self-provision NIDs for all customers it seeks to serve would materially raise the cost of entry, delay broad facilities-based market entry, and materially limit the scope and quality of the competitor's service offerings." Specifically, "requiring competitors to install numerous, redundant NIDs at the interface to customer premises wiring would constitute a substantial economic and practical barrier to market entry, and a needless waste of carrier resources" (*id.*, para. 238).

Respectfully submitted,

SPRINT CORPORATION



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document of Sprint Corporation in CC Docket No. 96-98 was sent by United States First-Class Mail, postage prepaid, on this 22nd day of March, 2000 to the parties listed below.

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